**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928**

**WP(C).No. 1717 of 2006(D)**
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**PETITIONER:**
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**FLEMINGO (DFS) PRIVATE LTD.,**
**TC.34/143, OPP.THIRUVANANTHAPURAM**
**INTERNATIONAL AIRPORT, AIRPORT ROAD,**
**THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGER,**
**MR. NIXON VARGHESE.**

**BY ADV. SRI.A.KUMAR**

**RESPONDENTS:**
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**THE COMMERCIAL TAX INSPECTOR,**
**COMMERCIAL TAXES CHECK POST,**
**AMARAVILA.**

**BY SR. GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C) NO.1717/2006**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE JUDGMENT IN WP(C) NO.12054/05 DT.29.9.05.**

**EXT.P2:- COPY OF THE NOTICE UNDER SEC. 47(2) OF THE KVAT ACT DT.11.1.06.**

**EXT.P3:- COPY OF THE SHIPPING BILL DT.9.1.06.**

**EXT.P4:- COPY OF THE DELIVERY RECEIPT DT.9.1.05.**

**EXT.P5:- COPY OF THE LETTER DT.9.1.05 BY THE DY. COMMISSIONER OF CUSTOMS, CHENNAI.**

**/TRUE COPY/**

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**K.BALAKRISHNAN NAIR,J.**

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WP(C)NO.1717 OF 2006-D

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Judgment

The petitioner challenges Ext.P2 notice issued by the respondent under Section 47(2) of the KVAT Act. The goods detained were goods imported for sale in a duty free shop at Thiruvananthapuram International Airport. Therefore, the petitioner submits, the sale if any made by it, is not liable to tax and so, the notice issued under Section 47(2) of the KVAT Act is issued without jurisdiction. The respondent is directed to forward the file leading to Ext.P2 to the Jurisdictional Commercial Taxes Officer (Enquiry). The said Officer shall hear the petitioner and take a decision on the proceedings initiated against it by issuing Ext.P2 notice in accordance with law within six weeks from the date of receipt of a copy of this Judgment. All the contentions of the petitioner including the one made relying on Ext.P1 Judgment of this Court, are kept open.

The Writ Petition is disposed of as above.

13.03.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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